IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1061 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANBHAI MAGANBHAI DABHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MJ BUDDHBHATTI for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 29/09/2005
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.H.WAGHELA)

1. Whether the appellant-accused would be covered by Section 84 of the IPC in the proved facts and circumstances of homicidal death of the victim is the main issue arising in this Criminal Appeal preferred from the judgment and order dated 5.10.1996 of the learned Additional Sessions Judge, Nadiad, sentencing him to imprisonment for life after convicting him of the offence punishable under section 302 of the IPC.

2. According to the prosecution case, on 11.1.1995, the appellant killed one Shanabhai Shankarbhai in the outskirts of a village in broad day light by fatal blows of dharia on his head. The appellant was arrested after two days when he surrendered himself in the police station and the blood-stained dharia was also recovered thereafter.

3. During the course of the trial, the Medical Officer deposed at Exh. 9 and produced the post-mortem report at Exh. 10, according to which, the death of the victim was caused by excessive bleeding and shock and the injuries were sufficient to cause death. The sole eye witness, namely Vinaben was examined at Exh. 17 and although she was aged 13 years, her deposition was accepted after verifying and recording her competence and in view of consistency in her statements. Relying upon the evidence including deposition of panch witnesses at Exhs. 18, 21, 23 and 24 and the deposition of the Investigating Officer at Exh. 25, the trial Court recorded a finding of fact that the death of the victim was homicidal.

4. Examining the issue whether it was a case of murder covered by the provisions of Section 300 of the IPC, the Court relied upon the evidence to the effect that the accused had selected dharia as a weapon and inflicted four blows on the head of the victim with such ferocity that it was sufficient to cause death in the natural course. Since the accused had not only taken a defence of his being a person of unsound mind, but examined a doctor at Exh. 28, the Court adverted to his deposition but found that that doctor had treated the accused about 14 months before the offence and hence, it could not throw light upon the state of mental health of the accused at the time of the offence and, therefore, being not satisfied with the proof of insanity, benefit of the provisions of Section 84 of the IPC was not accorded to the accused and he was held to be guilty of murder punishable under Section 302 of the IPC.

5. After the appeal being admitted in the year 1996,the advocate of the appellant appeared to have retired and in the year 2004, learned counsel Mr MJ Buddhbhatti was appointed by the Court and requested to assist. He submitted that the incident of death of the victim caused by the appellant could hardly be a matter of serious controversy in view of the eye-witness account of the incident. However, he pointed out from the record that the doctor, examined in defence of the accused at Exh. 28, namely Dr Mitesh Shah, had categorically stated on oath that he was a practicing Psychiatrist since 1988, that the accused was registered as a patient in his diary of July, 1993, that he was then suffering from dehydration, that he was examined and was tentatively diagnosed to have

schizophrenia. He had to be administered four injections in view of the disturbed condition of his mind and the medicines for such conditions were prescribed by him. That, after his undergoing the treatment for about three months, he had come to the conclusion that the accused was suffering from paranoid schizophrenia. After referring to the authoritative books on the subject, he had opined in his deposition that in all such cases, the chances of recurrence of an attack are 40%, if the treatment were continued and if necessary medicines were not regularly taken, the chances of recurrence were 80% within two years. He also deposed,that, after 5.11.1993, he had not examined the accused. Mr Buddhbhatti pointed out from the deposition of the eye-witness (Exh. 17), that she had admitted in her cross-examination that the vegetable and grocery shop of the accused had been closed down after his sickness and he was addressed in the village as a mad man. She had also stated that, at the time of the incident, the accused had approached the victim who was grazing his cattle and asked him why he had cast a spell of some deity on him. When the victim denied to have done anything of that sort, the accused had become excited and attacked the victim with his dharia and then just stood there. It was also pointed out from the deposition of one of the panch witnesses, namely Ratansinh V. Dabhi at Exh. 18, that he knew the accused since a long time as the denizen of the same village. He had admitted in his cross-examination that the accused was of unsound mind since previous four years and his family was taking him for treatment at a clinic in an adjoining village. He claimed to have the knowledge that, till the date of the panchnama, he was mad. On the

basis of these pieces of evidence, learned counsel Mr Buddhbhatti argued that the case of the accused was squarely covered by the provisions of Section 84 of the IPC and he could not be convicted and punished under Section 302 of the IPC.

6. Learned APP Mr Kodekar vehemently argued that in order to fall within the exception of Section 84 of the IPC, the accused person has to be proved to be incapable of knowing the nature of his act at the time of doing it and in absence of such positive evidence, the general presumption that a person knows the consequences of his acts has to operate. He also submitted that this is not a case of utter lack of motive in so far as the accused had perceived an evil spell having been caused by the victim and pursuant to that he had attacked the victim with the deadly weapon knowing and understanding the result of his act.

7. It is true that there is no direct evidence about the state of mind of the accused person at the time the offence was committed. Therefore, it has to be gathered and inferred from the evidence on record and tested by the standard of preponderance of probability. As held by the Supreme Court in **Shrikant Anandrao Bhosale, vs. State of Maharashtra (AIR 2002 SC 3399),** the burden of proof upon the accused person is no higher than that rests upon a party to civil proceedings. Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court by the accused or by the prosecution may raise a reasonable doubt in the mind of the Court as regards one or

more of the ingredients of the offence, including mens rea of the accused and in that case the Court would be entitled to acquit the accused on the ground that the general burden of proof, resting on the prosecution was not discharged. It is further observed by the Supreme Court in the judgment that "... ... regarding the state of mind of the accused at the time of commission of offence, in our opinion, ordinarily that would be an aspect to be inferred from the circumstances".

8. A monograph on the specific topic of schizophrenia written by Dr Laxman Dutt, M.B., DPM, MD (Psychiatry), MAPA (USA), FIPS, Honorary Psychiatrist at the Sheth V.S. General Hospital and Honorary Associate Professor of Psychiatry at NHL Municipal Medical College, in vernacular, imparting elementary information about "schizophrenia" was perused. According to it, schizophrenia, if not treated, generally aggravates. One out of hundred persons on an average suffers from this disease caused, inter alia, by lower income and social problems caused thereby. All the patients affected with schizophrenia require continuous treatment. Such patients suffer from delusions about somebody controlling or persecuting them and during the spells of delusions, such patients tend to become violent or commit suicide. Such patients could be unable to control their impulses. It is a mental ailment which feeds on itself and causes very frequent attacks if not treated and the patient, inter alia, suffers poor nutrition. If the disease is not fully and properly treated, it becomes chronic after two years and the recurrence of its attacks could be attributed to cessation of medical care and

stopping of the necessary medicines.

8.1 According to Modi's Medical Jurisprudence and Toxicology (21st Edition), in vast majority of cases of paranoid schizophrenia suspiciousness is a characteristic symptom at an early stage which gradually develops into delusions of persecution. When delusions affect his behaviour he is often a source of danger to himself and to others. Schizophrenics occasionally commit murder as a result of delusional ideas that the victim in some way is persecuting them. Psychopaths may kill as part of a general pattern of violence, in which case, the death may be an unintended result arising through loss of control.

9. In the facts of the present case, there is no evidence of any previous enmity with the victim or any sudden provocation to excite the accused person. On the other hand, not only the medical evidence led in defence, but the eye-witness and another prosecution witness have confirmed that the appellant was regarded and treated as a person of unsound mind. Once the psychiatrist had clearly diagnosed that the accused person was suffering from paranoid schizophrenia and there was evidence that the requisite treatment was discontinued, the prognosis would have been that the accused person was bound to have attacks of the disease under which he would commit such acts of violence which a normal person in a normal state of mind would not commit. That, in our opinion, was sufficient to raise a reasonable doubt about mens rea of the accused. The question whether the appellant has proved the existence of circumstances bringing his case within the purview of

Section 84 of the IPC has to be examined from the totality of circumstances. In the case before the Supreme Court in Shrikant Anandrao Bhosale (Supra), the proved circumstances, some of which are similar to the facts proved in the present case, were as under :-

1. The appellant had a family history – his father was suffering from psychiatric illness.

2. Cause of ailment was not known.

3. Appellant was being treated for unsoundness of mind since 1992 – Diagnosed as suffering from paranoid schizophrenia.

4. Within a short span, soon after the incident from 27th June to 5th December, 1994, he had to be taken for treatment of ailment 25 times to hospital.

5. Appellant was under regular treatment for the mental ailment.

6. The motive for killing of wife was only that she was opposing the idea of the appellant resigning the job of a Police Constable.

7. Killing was in day light with no attempt to hide or run away.

10. In view of the peculiar facts and circumstances proved before the Court and admitted by the prosecution witnesses, we find that the burden cast upon the accused person to prove the ingredients of Section 84 IPC was duly discharged making it highly probable that, without any proximate provocation and without any history of enmity, the accused was driven to attack the victim by reason of unsoundness of mind. It is, therefore, difficult to attribute any mens

rea to the accused in such circumstances.

11. It was also pointed out by learned counsel Mr Buddhbhatti that, in any case, the appellant had, by now, already undergone about 12 years of imprisonment, including the period of remission, during which period he has been treated by the Psychiatrist at SSG Hospital, although no active psychiatric treatment was reported to be required at present. However, we are inclined to accept the plea of the appellant in defence as having been sufficiently substantiated to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. There is a reasonable doubt that at the time of commission of crime, the appellant was incapable of knowing the nature of act by reason of unsoundness of mind and hence, he was entitled to the benefit of Section 84 of the IPC.

12. For the above reasons, the impugned judgment and order dated 5.10.1996 of the learned Additional Sessions Judge, Nadiad in Sessions Case No. 110 of 1995 is set aside and the appeal is allowed. The appellant shall be set at liberty forthwith, if not required in any other case.

Before parting, we place on record our appreciation for the able assistance rendered at the request of the Court by learned counsel Mr MJ Buddhbhatti.

(M.S. SHAH, J.) **(D.H. WAGHELA, J.)**

sundar/-